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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ISABEL BENITEZ-BELTRAN,

Defendant - Appellant.

No. 04-30295

D.C. No. CR-03-02205-FVS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, Chief Judge, Presiding

Submitted November 8, 2005^{**}

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Isabel Benitez-Beltran appeals his 121-month sentence imposed following his guilty plea conviction to possession of methamphetamine with intent to

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

distribute, in violation of 21 U.S.C. § 841(a)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291. We remand for resentencing.

Benitez-Beltran contends that he is entitled to a remand for resentencing. Because Benitez-Beltran was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (concluding that a limited remand is warranted in all pending direct appeals involving unpreserved *United States v. Booker*, 125 S. Ct. 738 (2005), errors, whether constitutional or nonconstitutional). If appellant does not want to pursue resentencing, appellant should promptly notify the district court judge on remand. *See Ameline*, 409 F.3d at 1084.

REMANDED.